# United States Department of Labor
# Employees' Compensation Appeals Board

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| **C.H., Appellant** | ) | |
| **and** | ) | **Docket No. 14-1493** |
| | ) | **Issued: January 12, 2015** |
| **U.S. POSTAL SEVICE, POST OFFICE, Kansas City, MO, Employer** | ) | |

*Appearances:*
*Alan J. Shapiro, Esq.*, for the appellant
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

### *JURISDICTION*

On June 16, 2014 appellant, through her attorney, filed a timely appeal from a May 6, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

### *ISSUE*

The issue is whether appellant has met her burden of proof to establish diagnosed conditions sustained on December 9, 2012 in the performance of duty.

### *FACTUAL HISTORY*

On February 14, 2013 appellant, then a 49-year-old mail processing clerk, filed a traumatic injury claim alleging that she sustained a work-related injury on December 9, 2012, a date when she woke up and could not raise her arms. She indicated that she had been working

[1] 5 U.S.C. § 8101 *et seq.*

the prior night on a new machine with sleeves, had severe pain in her neck and both arms and that her tendons were tight and she could not raise her arms.

Appellant provided a statement on December 29, 2012 in which she indicated that she had worked all night and when she woke up on December 9, 2012 she could not lift her arms. Regarding medical treatment, she stated that her specialist had moved, that it took two weeks to find another specialist, and another two weeks to be seen. Documentation submitted included pay rate information; physical therapy notes dated January 28 and 30, 2013; prescriptions for physical therapy and magnetic resonance imaging (MRI) scans of the cervical and lumbar spine; work excuses and work releases; a January 16, 2013 rehabilitation evaluation from University of Kansas Hospital; and a January 9, 2103 MRI scan of both shoulders.

In a December 11, 2012 emergency room report, Dr. Chad M. Cannon, Board-certified in emergency medicine, noted appellant's complaints of back, arm, and leg pain for a few weeks and that she changed machines at work and had to lift her arms above shoulder height, which caused increased arm pain. He diagnosed trapezius muscle strain and back pain.

Medical reports dated January 7, 16, and March 6, 2013 from Dr. Tiffany Williams, a Board-certified physiatrist, were also received. In her January 7, 2013 report, she noted that appellant worked as a mail processor and did heavy overhead lifting. Appellant reported lifting an approximately 70-pound item and the next day she awoke with severe pain through all her extremities, worse in the bilateral shoulders with referral down the anterior arms to the elbows. Dr. Williams noted that appellant underwent cervical interventional spine procedures in 2009 and had a past history of anterior cruciate ligament repair, cervical traumatic fractures in 2001 status post C4-6 fusion. She stated that appellant's history and physical examination were suggestive of bilateral rotator cuff tears and greater trochanteric bursitis. Another possible pain generator included cervical degenerative disc disease. Diagnostic studies were ordered. In her January 16, 2013 report, Dr. Williams provided an assessment of neck pain, low back pain, shoulder pain, rotator cuff sprain and subacromial bursitis, shoulder arthritis, and cervical degenerative disc disease. She provided a prescription for physical therapy as she opined that there was work-related overuse causing stress on the tendons resulting in tendinosis and bursitis. In her March 6, 2013 report, Dr. Williams reported on the results of the January 9, 2013 MRI scans of the shoulders and cervical x-rays. An assessment of neck pain, low back pain, shoulder pain, rotator cuff sprain and subacromial bursitis, shoulder arthritis, and cervical degenerative disc disease status post cervical fusion was provided.

In a January 3, 2013 report, Jay L. Carter, a chiropractor, noted that appellant received care several times during December 2012 and on January 2, 2013 for lower back, hip, and shoulder pain. He reported that on December 10, 2012 she stated that her right shoulder had become quite painful over the weekend to the point that she could not raise it up very far and on December 11, 2012 she went to the local emergency room. Dr. Carter noted appellant's job duties of pulling all-purpose carts of mail, loading, and unloading trays of mail, etc., standing on her feet 7 hours on an 8-hour shift and requiring a significant amount of repetitive movements such as bending, twisting, and reaching above the shoulder level. He opined that those types of physical activities would aggravate appellant's conditions and should be avoided, if possible.

On March 29, 2013 OWCP advised appellant of the deficiencies in her claim and requested that she submit additional factual and medical information. Appellant was accorded 30 days to submit the requested information.

In response, OWCP received an April 6, 2013 letter from appellant, noting that she was assigned a new machine with sleeving in December 2013 and that, after work on December 9, 2013, she went straight to bed and woke up and could not move her neck and arms. Appellant indicated that she had not experienced pain like that since her original accident when she broke her neck. She related that she was told by a claims examiner to file a new traumatic injury claim. OWCP also received illegible copies of prescriptions dated January 7 and 16, 2013; authorization requests and requests for diagnostic testing; a January 15, 2013 physical therapy order and work restrictions; results of lumbar and cervical MRI scans performed on March 26, 2013; and chart notes from the University of Kansas Hospital Spine Center dated March 6 and 22, 2013.

In a March 6, 2013 report, Dr. Aimee Widner, a Board-certified physiatrist, reported appellant was last seen on January 16, 2013 and was diagnosed with rotator cuff sprain and subacromial bursitis, cervical degenerative disc disease. She noted that there was concern for myelopathy given gait changes and bowel/bladder changes and that cervical and lumbar MRI scans and physical therapy were ordered. Dr. Widner noted appellant's symptoms were roughly unchanged. An assessment of neck pain, low back pain, shoulder pain, rotator cuff sprain, and subacromial bursitis, shoulder arthritis, and cervical disc disease status post cervical fusion was provided.

In a March 22, 2013 status report, Dr. Williams provided an impression of neck pain, subacromial bursitis, shoulder pain, cervical degenerative disc disease status post cervical fusion, and low back pain.

By decision dated May 2, 2013, OWCP denied the claim on the grounds that fact of injury was not established. It found that the evidence was insufficient to establish that the event occurred as described, as the brief description of injury provided by appellant was not a clear description of the work factors believed to have caused her injury.[2]

On May 7, 2013 appellant, through her attorney, appealed OWCP's May 2, 2013 decision and requested a telephonic hearing, which was held November 1, 2013. She testified as to the circumstances surrounding the alleged work injury in much greater detail. Appellant alleged that she developed pain in her neck and shoulders over the course of her work shift when she was assigned to work on a delivery bar code sorter (DBCS) machine. This task required repetitive lifting of trays over her head and pulling of APCs. Appellant alleged that she would lift up to four trays, each weighing from 10 to 20 pounds and that a full APC could weigh up to 70 pounds. She also indicated that she had restrictions from a prior work injury in 2000, when she broke her neck. Appellant's attorney argued that Dr. Williams' report dated August 23, 2013 supported causal relationship, between her work duties, to which she testified, and her condition.

[2] It noted that, even if the factual component had been met, the medical evidence was too generalized to establish causal relationship.

Evidence received post-hearing included a May 30, 2012 inspection report from the Occupational Safety and Health Administration regarding ergonomic risk factors of the DBCS; a December 11, 2012 emergency department visit to the University of Kansas Hospital, which diagnosed trapezius muscle strain and back pain; and various work releases.

In an April 2, 2013 report, Dr. Reginald L. Fears, a physiatrist, diagnosed rotator cuff tendinosis with impingement syndrome, subacromial bursitis, and shoulder pain. In an addendum to Dr. Fears, report, Dr. Williams opined that the history and physical examination was consistent with subacromial bursitis and rotator cuff tendinosis with impingement syndrome secondary to overuse from her occupational duties.

In an August 23, 2013 form report, Dr. Williams stated that appellant did not provide the specifics of the accident or work activity that caused the incident, but was told a 2000 injury resulted in cervical fracture/trauma. He continued by reporting that she also stated that in December 2012 she lifted a 70-pound object above her shoulders and had severe pain in the shoulders, neck, and low back. Dr. Williams noted findings on physical examination and mechanical tests performed and diagnosed neck pain, low back pain, shoulder pain, rotator cuff sprain, and subacromial bursitis; shoulder osteoarthritis; and cervical disc degeneration. She attested that the injury was the direct and proximate cause of the diagnoses listed by singing a form with that language "pretyped" on the form. The form also had the "pretype" language that there could be other causes for these medical problems, but one of the causes was clearly the activities of work described by appellant.

By decision dated January 28, 2014, an OWCP hearing representative found that appellant had provided hearing testimony sufficient to establish that the work incident occurred as alleged. He found, however, that after considering Dr. Williams' August 23, 2013 report, together with the delay in reporting the injury and the serious preexisting back condition, he found that she had failed to meet his burden of proof to establish a work-related condition.

On April 17, 2014 appellant, through her attorney, requested reconsideration.

In another pretyped form report dated April 4, 2014, Dr. Williams described the injury as repetitive/overuse stress on the shoulders and cervical spine. She provided examination findings and mechanical tests performed and diagnosed rotator cuff tendinosis, impingement syndrome, subacromial bursitis, adhesive capsulitis and cervical degenerative disc disease. The form again included a pretyped paragraph noting that the fact of injury was the direct and proximate cause of the diagnoses listed. Although there could be other causes for these medical problems, one of the causes is clearly the activities of work described by appellant.

By decision dated May 6, 2014, OWCP denied modification of its prior decision finding that the latest opinion of Dr. Williams provided brief, unreasoned statements without a significant discussion of the primary issue of causal relationship.

## ***LEGAL PRECEDENT***

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his claim, including the fact that the individual is an employee of the

United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a fact of injury has been established. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.[5]

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.[6] The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[7] The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[8] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[9]

## ***ANALYSIS***

OWCP accepted that appellant awoke on December 9, 2012 unable to move or lift her arms, having worked a shift the prior night using a machine that required her to lift trays overhead and pull heavy APCs. It denied her claim, however, as the medical evidence failed to establish a causal relationship between those activities and her reported neck and shoulder conditions.

[3] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[4] *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *See Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

[6] *See J.Z.*, 58 ECAB 529, 531 (2007); *Paul E. Thams*, 56 ECAB 503, 511 (2005).

[7] *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[8] *James Mack*, 43 ECAB 321, 329 (1991).

[9] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

In several form reports, Dr. Williams provided an assessment of neck pain, low back pain, shoulder pain, rotator cuff strain and subacromial bursitis, shoulder arthritis, and cervical degenerative disc disease status post cervical fusion. In her January 7, 2013 and August 23, 2013 reports, she reported that appellant works as a mail processor and does heavy overhead lifting. Dr. Williams indicated that appellant reported lifting an approximately 70-pound item in December 2012 and the next day she awoke with severe pain through all her extremities, worse in the bilateral shoulders with referral down the anterior arms to the elbows. In her January 16, 2013 report and April 2, 2013 addendum to Dr. Fears' April 2, 2013 report, Dr. Williams opined that there was work-related overuse causing stress on the tendons, which caused tendinosis and bursitis and, in her August 23, 2013 and April 4, 2014 reports, she opined that the facts of injury were a direct and proximate cause of the diagnoses based on reasonable medical probability.

The Board finds that Dr. Williams' reports are not well rationalized. He failed to provide an adequate medical history only generally noting that appellant does heavy overhead lifting and that she reported severe pain throughout her extremities after lifting approximately 70-pound items the evening before causing an injury in December 2012. Dr. Williams does not identify specific work activities appellant was performing, how often she performed them, and how those activities caused, aggravated, or contributed to the identified diagnoses. She provides a diagnosis of repetitive overuse stress of the shoulders and cervical spine, but then notes the facts of a specific incident of lifting objects up to 70 pounds. As such, the opinion of Dr. Williams is not reasoned or based on an accurate factual history of injury as set forth by appellant in her hearing testimony and as adopted by the hearing representative. Her assessment of "repetitive/overuse stress" is of little probative value as she failed to adequately describe appellant's work duties or her duties when she worked the new machine with sleeves, including the frequency of her overhead lifting and pulling activities. Moreover, Dr. Williams failed to provide an explanation on how repetitive overhead activities or pulling would cause or aggravate her diagnosed shoulder conditions. Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.[10] The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record, and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.[11] Dr. Williams' reports do not meet that standard and are therefore insufficient to meet appellant's burden of proof.[12]

In his December 11, 2012 emergency room report, Dr. Cannon noted that appellant changed machines at work and had to lift arms above shoulder height which caused increased arm pain. While he diagnosed trapezius muscle strain and back pain, he did not provide any explanation as to how or if her current conditions were related to the change of machines at work which required her to lift above shoulder height. Furthermore, Dr. Cannon failed to adequately describe appellant's work duties, did not specify how long she worked on the new machine, how

[10] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

[11] *See Lee R. Haywood*, 48 ECAB 145 (1996).

[12] *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

many hours per day she would lift overhead, and the frequency of the lifting and other physical movements and tasks. Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.[13]

Two additional physicians provided reports including diagnoses of appellant's conditions.

In her March 6, 2013 report, Dr. Widner provided an assessment of neck pain, low back pain, shoulder pain, rotator cuff sprain and subacromial bursitis, shoulder arthritis, and cervical disc disease status post cervical fusion. In his April 2, 2013 report, Dr. Fears diagnosed rotator cuff tendonosis with impingement syndrome; subacromial bursitis, and shoulder pain. However, neither physician specifically addressed whether the employment incident or employment factors caused or contributed to appellant's diagnosed conditions.[14]

The other reports of record are of no probative value on the issue of causal relationship. The MRI scan reports of the shoulders, cervical, and lumbar spine and the hospital records are not probative on the issue of causal relationship and medical reports which do not offer any opinion regarding the cause of an employee's condition are of limited probative value on the issue of causal relationship.[15] The January 3, 2013 report from Dr. Carter, a chiropractor, is of no probative medical value as he does not diagnose spinal subluxation or document whether x-rays were taken.[16] The physical therapy reports are of no probative medical value as lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under FECA.[17]

The Board finds that the medical evidence does not establish that appellant sustained a medical condition causally related to her federal employment. An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment, is sufficient to establish causal relationship.[18] Causal relationships must be established by rationalized medical opinion evidence. As noted, the

[13] *Supra* note 10.

[14] *Michael E. Smith*, 50 ECAB 313 (1999). *See J.F.*, Docket No. 09-1061 (issued November 17, 2009) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[15] *Willie M. Miller*, 53 ECAB 697 (2002).

[16] Section 8101(2) of FECA provides as follows: "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. The term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulations by the secretary. *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

[17] *David P. Sawchuk*, 57 ECAB 316 (2006). Section 8101(2) of FECA provides that "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See Roy L. Humphrey*, 57 ECAB 238 (2005).

[18] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

medical evidence is insufficient to establish appellant's claim. Consequently, OWCP properly found that appellant did not meet her burden of proof in establishing her claim.

On appeal, appellant's attorney argued that the decision is contrary to fact and law. As noted above, the medical evidence does not establish that appellant's diagnosed conditions are causally related to the accepted December 9, 2012 event. Reports from appellant's physicians failed to provide sufficient medical rationale based on a complete factual background explaining why appellant's diagnosed conditions were caused or aggravated by particular employment duties. As noted by the hearing representative in his well-reasoned decision, need for such rationale is particularly important due to the delayed reporting of injury and appellant's complicated serious preexisting neck condition.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

## ***CONCLUSION***

The Board finds that appellant did not meet her burden of proof to establish an injury or medical conditions on December 9, 2012 causally related to employment duties.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the May 6, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 12, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board